

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375

Released: January 18, 2022

⁶ *Id.* at 9618-20, paras. 218, 221.

data collection,⁷ and “to require each provider to fully explain and justify each step of its costing process” including, where appropriate, “to specify the methodology the provider shall use in any or all of those steps.”⁸

4. Pursuant to this delegation, WCB/OEA developed proposals for the Third Mandatory Data Collection and issued a *Public Notice* seeking comments on all aspects of the proposed collection.⁹ Concurrently, pursuant to the Paperwork Reduction Act of 1995 (PRA), the Commission published a notice in the Federal Register seeking comment on potential burdens of the proposed one-time reporting requirements.¹⁰

5. We received comments from numerous ICS providers, public interest advocates, and other interested parties in response to the *Public Notice*,¹¹ and one comment on the PRA notice.¹² We have thoroughly considered all of these filings in implementing this final data collection.¹³

III. DISCUSSION

A. Implementing the Third Mandatory Data Collection

6. Pursuant to our delegated authority, we adopt the attached instructions, template, and certification form to implement the Third Mandatory Data Collection.¹⁴ Commenters generally support the broad contours and specific requirements of the data collection as proposed in *Third MDC Public Notice*.¹⁵ In particular, we received neither any comments criticizing our proposal to adopt separate

⁷ 2021 ICS Order, 36 FCC Rcd at 9620-21, paras. 223-25. The Commission further directed WCB/OEA to “incorporate lessons learned from the two prior data collections to ensure that [the Commission] collect[s], to the extent possible, uniform cost, demand, and revenue data from each provider.” *Id.* at 9621, para. 225; *see also id.* at 9621-22, para. 226 (directing WCB/OEA to collect, at a minimum, information designed to enable the Commission to meet certain objectives).

⁸ *Id.* at 9622, para. 227.

⁹ *Third MDC Public Notice*, *passim* (seeking comments on various topics concerning the proposed instructions and template, including definitions, financial information, cost allocation, and response granularity, as well as the treatments of site commissions and security services).

¹⁰ Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, 86 Fed. Reg. 54970 (Oct. 5, 2021) (*60-Day PRA Notice*).

¹¹ We received comments or reply comments in response to this *Public Notice* from Benj Azose; Global Tel*Link Corporation (GTL); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prison Policy Initiative, Inc. (PPI); Securus Technologies, LLC (Securus); Worth Rises; and the Wright Petitioners, the Benton Institute for Broadband & Society, and Public Knowledge (collectively, Public Interest Parties). Recently, GTL issued a press release announcing it had changed its name to ViaPath Technologies. *See* Press Release, ViaPath Technologies, GTL Becomes ViaPath Technologies, Launches Expanded Reentry Services (Jan. 4, 2022), <https://www.viath.com/news/gtl-becomes-viath-technologies-launches-expanded-reentry-services/>. For purposes of this Order, to avoid confusion with reference to the record, we will continue to refer to this entity as GTL.

¹² GTL Paperwork Reduction Act Comments (filed Dec. 6, 2021) (GTL PRA Comments).

¹³ We have also made a small number of minor conforming edits to the instructions and reporting template to, for example, ensure consistency in the use of defined terms.

¹⁴ Appendix A provides a link to these documents.

¹⁵ *See, e.g.*, Pay Tel Reply at 2 (reasoning that data from the Third Mandatory Data Collection “are a threshold condition necessary for the Commission to analyze and ascertain appropriate ICS rate caps across varying facility types and sizes”); PPI Comments at 3 (asserting that “[t]he instructions and instruments that comprise the Data Collection clearly reflect the Commission’s ongoing commitment to address high prices and other unfair practices”); Securus Comments at 1 (explaining that “Securus largely supports the proposed instructions and processes and proffers several modifications designed to improve the quality, accuracy, and utility of the collected data”); Worth

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Word- and Excel-formatted template forms, nor any proposals for an alternative organization or reporting structure.¹⁶ We therefore implement our proposed structure.

7. Commenters did, however, offer suggestions to “improve the quality, accuracy, and utility of the data collected.”¹⁷ In response to these suggestions, we have reevaluated some of our proposals and refined certain aspects of the instructions and templates, as set forth in greater detail below. These refinements include expanding the reporting period for cost data from one year to three years, revising certain proposed definitions, revamping the reporting of costs related to site commissions and security services, and reorganizing the reporting of operating expenses.¹⁸ We conclude that these and the other modifications we make appropriately balance the need for “detailed and specific instructions and templates” and the desire to avoid unduly burdening providers.¹⁹

8. In finalizing the requirements for the data collection, we do not resolve issues that are pending in the ICS rulemaking, such as the extent to which security costs are or are not related to ICS, or whether the Commission should change its rules, as some parties have suggested.²⁰ As the Commission explained in the *2021 ICS Order*, the purpose of this data collection is to provide the Commission with sufficient information to resolve various issues it is considering as part of that rulemaking, including the adoption of permanent interstate and international rate caps.²¹ Therefore, we agree with Worth Rises and

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Rises Comments at 1 (highlighting that the data collection “will be a vital resource to both the Commission and the public”); Public Interest Parties Comments at 1 (explaining that “the Public Interest Parties largely support the Third MDC”).

¹⁶ See, e.g., Public Interest Parties Comments Appx. A, Coleman Bazelon et al., The Brattle Group, Brattle Report at 1 (Public Interest Parties Brattle Report) (explaining that “[t]he data collection components and methodology follow some of the best practices from other rate-regulated industries that collect such data and applies [them] to the ICS context”).

¹⁷ See, e.g., Securus Comments at 1; see also PPI Comments at 4 (suggesting modifications to “help provide clarity and resolve potential ambiguities”).

¹⁸ See *infra* Sections III.B-C.

¹⁹ See *Third MDC Public Notice* at 2. This conclusion is consistent with the Commission’s finding in the *2021 ICS Order* that the benefits of conducting this data collection “far outweigh any burden on providers” given the “adverse impact that unreasonably high rates and ancillary services charges have on incarcerated people and those family and loved ones they call.” *2021 ICS Order*, 36 FCC Rcd at 9620, para. 221; see *Third MDC Public Notice* at 7. Commenters reinforce this Commission finding. E.g., Securus Comments at 3 (explaining the benefit of obtaining “more accurate costs” in relation to the costs of collecting that information for providers); PPI Reply at 4 (emphasizing that WCB/OEA have “acknowledged that the Data Collection will constitute a burden on responding carriers, but the bureaus have gone to great lengths to minimize that burden”). In particular, commenters highlight the importance of the Third Mandatory Data Collection considering that the “flaws in prior data collections impeded meaningful rate-setting analysis and, ultimately, led to the Third MDC.” Pay Tel Reply at 2; see also Public Interest Parties Comments at 1 (referring to the “shortcomings of the prior collection”).

²⁰ See, e.g., NCIC Comments at 5-7 (commenting on various issues pertaining to the role of security services); Public Interest Parties Brattle Report at 13 (asking WCB/OEA to expand the definition of ancillary services); PPI Comments at 11-13, 15 (requesting changes to definitions of certain permissible ancillary services and of the term “contractually prescribed site commission”); Worth Rises Comments at 1-2 (asking the Commission to exclude certain security and surveillance costs in setting rate caps and asking WCB/OEA to instruct providers to omit “population supervision costs entirely from reporting”); Public Interest Parties Brattle Report at 12 (requesting that “allowable security expenses should exclude population supervision and facility management type of activities such as walking an incarcerated person from their cell to the phone”).

²¹ *2021 ICS Order*, 36 FCC Rcd at 9618-19, paras. 218, 221. In this regard, we disagree with GTL’s suggestion that the Commission already has or will get certain information regarding, for example, “site commission payments, correctional facilities served, and annual ICS and ancillary service charge revenues” from the ICS Annual Reports. GTL PRA Comments at 4. As the Commission explained in the *2021 ICS Order*, “while the Annual Reports contain useful and relevant marketplace information on providers’ rates and charges, we disagree with the

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others that this Order “is not the proper administrative vehicle” to revise the scope of the data collection or change Commission rules.²²

9. In the sections that follow, we first address proposals to change specific data requests and then turn to proposals for more general revisions to the instructions.

B. Specific Data Requests

1. Categories of Information Requested

10. We adopt a requirement for ICS providers to report customer prepayments separately and modify the definition and thus the calculation of “Net Capital Stock” to reflect the subtraction of customer deposits.²³ PPI proposes this additional reporting requirement because “customer prepayments are a material balance-sheet item for ICS carriers.”²⁴ We find that customer prepayments are a source of non-investor supplied capital that should be subtracted from the providers’ net capital stock because providers are able to use these monies to finance their operations. This subtraction treats customer deposits as zero interest, non-investor supplied capital, since the return on net capital stock reflected in the providers’ annual total expenses will be reduced in proportion to the reduction in net capital stock. We also require providers to report the interest, if any, paid on customer prepayments separately from other interest expenses;²⁵ and we allow providers to add the interest paid on the customer deposits directly to their capital expense and annual total expenses.²⁶

2. Factors Affecting the Costs of Providing Interstate and International Inmate Calling Services

11. In the *Third MDC Public Notice*, we sought feedback about the types of data we should collect to help the Commission understand the factors that affect the costs of providing interstate and international calling services at the facility level.²⁷ We proposed to collect data on billed minutes, unbilled minutes, average daily population (ADP), the number of telephones and kiosks installed, the opening and closing of accounts, admissions, releases, and weekly turnover rate.²⁸ Based on record support, we find it appropriate to collect information on each of these metrics, including figures for new

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contention that the Annual Reports provide sufficient data to establish just and reasonable interstate inmate calling services rates.” *2021 ICS Order*, 36 FCC Rcd at 9620, para. 222. We do not revisit this view here. The Annual Reports do not require the type of detailed and disaggregated cost reporting that we require in this data collection, which the Commission has determined is an “essential prerequisite to adopting permanent interstate rate caps for both provider-related and facility-related costs.” *2021 ICS Order*, 36 FCC Rcd at 9618, para. 218.

²² Worth Rises Reply at 1; GTL Reply at 2, 5; *see also* GTL Comments at 8-9 (explaining that the issue of the role of security services is pending in the rulemaking and must be resolved there).

²³ FCC, *Calling Services for Incarcerated People, Third Mandatory Data Collection Instructions* at 9, 21-22 (*Third MDC Instructions*) (linked to by Appx. A, *infra*).

²⁴ PPI Comments at 15-16 (noting and comparing the amounts of customer prepayments to the amount of unrestricted cash balances for two ICS providers by using the providers’ balance sheets).

²⁵ *Id.*

²⁶ We modify the definition of “Capital Expenses” to make this clear.

²⁷ *Third MDC Public Notice* at 4-5.

²⁸ *Id.* at 4; FCC, *Calling Services for Incarcerated People, Third Mandatory Data Collection, Proposed Instructions* at 31-32, http://www.fcc.gov/sites/default/files/third_mandatory_data_collection_instructions.docx (last visited Jan. 4, 2022) (*Third MDC Proposed Instructions*) (linked to by the *Third MDC Public Notice* at 11, Appx. A, *Mandatory Data Collection Instructions and Templates*).

account generation and account termination.²⁹ Securus argues that it would be sufficient to collect only ADP and data on the opening and closing of accounts while GTL asserts that the number of kiosks or telephones and account generation and termination are inaccurate indicators of demand.³⁰ GTL asks us to rely solely on billed and unbilled minutes to determine demand.³¹ We decline to implement these proposals. As an initial matter, the ADP reported for a facility may not always accurately indicate the demand for ICS at the facility or otherwise fully capture the factors affecting providers' costs.³² Thus, other metrics are critical in assessing cost causality. Obtaining data on activities like account set-up and termination will help the Commission understand if and how such activities impact providers' costs.³³ In view of the above, we find GTL's suggestion that we can rely solely on billed and unbilled minutes too narrow.³⁴ Instead, we find that collecting additional information on facility population metrics and account generation and termination will help the Commission better understand the providers' cost structures, including at relatively small facilities.

12. We further adopt our proposal to require providers to submit weekly turnover rate data, where it is available. These data will supplement, and help the Commission correct potential flaws in, other population metrics (i.e., facility-level ADP data and the figures for account generation and account termination).³⁵ Some commenters disagree with this approach, arguing that it will impose a significant burden on providers because the facilities keep the pertinent data and often lag in reporting the measures, leaving ICS providers without a reliable way to track arrests and releases.³⁶ Given the record evidence indicating that turnover rates may play a significant role in cost causality at smaller facilities,³⁷ these data are important. Providers can work with the respective facilities they serve to compile this data where providers otherwise have no other way to ascertain it. We therefore decline the suggestion that we refrain from collecting turnover data, where available, simply because such data may not be available for all facilities. We conclude that the various population measures we adopt collectively supplement one-another and will help the Commission understand provider cost drivers, particularly at smaller jails.

²⁹ Securus Reply at 9 (arguing that it would be sufficient for us to collect information on ADP and on the opening and closing of accounts); Benj Azose Comments at 2 (recommending that we collect "some measure of new account creation"); Public Interest Parties Reply at 9 (suggesting that account generation and termination data could be important to understanding turnover at correctional facilities and demand changes).

³⁰ Securus Reply at 9; GTL Comments at 6-7.

³¹ GTL Comments at 7.

³² Public Interest Parties Brattle Report at 5-6 (arguing that ADP may not always be accurately reported).

³³ See Public Interest Parties Reply at 8-9; NCIC Comments at 3 (contending that providers incur one-time costs to establish interfaces with jail management systems that provide data the providers use to establish accounts for newly incarcerated persons).

³⁴ GTL Comments at 6-7 (arguing that we should not collect information on the number of kiosks, the number of telephones installed, new account generation, and account termination and focus instead only on minutes of use); see also Securus Reply at 9.

³⁵ See Public Interest Parties Brattle Report at 6. Providers must report their information according to the best information in their possession, custody, or control. *Third MDC Instructions* at 4 & n.10.

³⁶ GTL Comments 7; GTL PRA Comments at 5; NCIC Comments at 3; GTL Reply at 8; Pay Tel Reply at 5; Securus Reply at 9.

³⁷ *Third MDC Public Notice* at 5 (citing *2021 ICS Notice*, 36 FCC Rcd at 9662-63, para. 319 (discussing evidence that jails with ADPs below 1,000 experience higher admission and turnover rates than facilities with larger populations as well as Pay Tel's estimated average weekly turnover rate of 62.2% for jails compared with 1.01% for prisons)).

3. Site Commission Data

13. We take a series of steps to reform our proposals concerning site commission data in response to the record in an effort to obtain more detailed and disaggregated information. First, consistent with the Commission's actions in the *2021 ICS Order*,³⁸ we adopt our proposal to require ICS providers to categorize their site commission payments as either legally mandated or contractually prescribed for each of calendar years 2019 through 2021. GTL claims that requiring this categorization for three calendar years would impose a significant burden on providers because they had no obligation to separate site commission payments before the rules adopted in the *2021 ICS Order* became effective on October 26, 2021.³⁹ We find that GTL's characterization of the burden is overstated. Once a provider establishes whether site commission payments were legally mandated or contractually prescribed as of October 26, 2021, the additional burden of determining their categorization during earlier portions of the reporting period should be relatively minor, particularly where the provider operated under the same facility contract for the prior two years.

14. Second, after considering record comments, generally, regarding our proposed site commission data and various ways of supplementing reportable site commission data, we modify, on our own motion, the instructions and reporting requirements for site commissions to require providers to disaggregate their reported site commission payment information between monetary and in-kind payments and, further, between fixed and variable payments.⁴⁰ We likewise require providers to disclose each entity to which they pay site commissions at each facility in any fashion, and the amount of the same.⁴¹ We find that this additional disaggregated information will improve the Commission's understanding of the market and the role that site commissions play in the provision of inmate calling services.

15. Third, we adopt Securus's proposal that we require providers to identify and report up-front site commission payments at the beginning of a contract as a subset of fixed site commissions.⁴² We agree that this information will "provide a more accurate picture of overall site commissions,"⁴³ and we find that the associated burden on providers will be minimal.

16. We also adopt a new requirement instructing providers to explain how they allocate site commission payments between ICS and non-ICS operations. We agree with PPI that this will resolve uncertainty in situations where carriers make site commission payments for both ICS and non-ICS services.⁴⁴ Gathering this information is also consistent with the Commission's directive that we ensure providers allocate common expenses between their ICS operations and other operations.⁴⁵ Although Securus urges us to reject this proposal, claiming that it will "further inject[] the Commission into

³⁸ *2021 ICS Order*, 36 FCC Rcd at 9561-92, paras. 100-68 (discussing legally mandated and contractually prescribed site commissions).

³⁹ GTL Comments at 8.

⁴⁰ *Third MDC Instructions* at 36-41.

⁴¹ *Id.*; see PPI Comments at 13 (suggesting that we ask about the amount and type of site commissions paid under contracts at the facility level).

⁴² *Third MDC Instructions* at 36-41.

⁴³ Securus Comments at 4 (stating that providers face higher initial costs at the beginning of a contract).

⁴⁴ PPI Comments at 12-13. In support, Public Interest Parties claim that PPI's comments "show why more information is necessary to determine what, if any, site commission payments should be considered as recoverable by ICS providers." Public Interest Parties Reply at 6-7.

⁴⁵ *2021 ICS Order*, 36 FCC Rcd at 9621-22, para. 226.

unregulated services over which it has no jurisdiction,”⁴⁶ this information will help the Commission determine what portion, if any, of site commission payments are properly attributable to ICS.

17. We reword our instructions on the allocation of site commissions at the facility level to correct for a loophole that could otherwise result in some of a provider’s total site commission payments not being allocated to any facility. Specifically, we instruct providers to fully allocate any reported site commissions among the facilities associated with each site commission payment during the reporting period.⁴⁷ One commenter suggests that the Commission should require providers to identify the contract that governs ICS at each facility and require disclosure of the amounts and types of site commissions paid under that contract so that the Commission may understand instances where site commission payments were received by non-facility entities such as a governmental agency.⁴⁸ We adopt the requirement for providers to report each entity to which they pay site commissions at each facility in any fashion, and the amount of the same as a less burdensome alternative that will help clarify site commission allocations at the facility level.⁴⁹

18. We decline to adopt additional reporting requirements regarding how site commission payments are spent or how the expenditures are related to ICS.⁵⁰ To be useful, such information would need to be broken down into categories similar to those that we require for provider costs. In addition, providers would most likely have to obtain this detailed categorized information from facility administrators, who, in turn, would have to expend significant efforts in compiling the requested information. In many cases, these administrators may be reluctant to provide accurate information about their use, especially where it bears no relationship to inmate calling. Given these circumstances, we decline to require providers to collect and report this information.

4. Information on Security Services

19. In the *Third MDC Public Notice*, we proposed to require providers to report their security costs in connection with their ICS and non-ICS-related operations as part of their reporting on site commission payments and sought comment on a number of associated issues.⁵¹ After considering the comments, we expand the data collection to include additional inquiries regarding providers’ security and surveillance services outside the site commission section, including inquiries requiring narrative explanations describing such services.⁵² This approach is consistent with Worth Rises’ and the Public Interest Parties’ arguments that the collection should capture all security costs, not just those incurred in the context of site commission payments, since many security and surveillance costs would be excluded under our proposed instructions.⁵³ We agree and revise the instructions accordingly.

⁴⁶ Securus Reply at 7.

⁴⁷ *Third MDC Instructions* at 36.

⁴⁸ PPI Comments at 13 (proposing additional questions on facility-specific site commissions).

⁴⁹ *See id.* (identifying that the wording of the facility-specific site commission questions is not consistent with the definition of “Site Commission” in the proposed instructions).

⁵⁰ Public Interest Parties Brattle Report at 13 (requesting that we request data on how site commissions are spent and whether the expenditures are related to ICS).

⁵¹ *Third MDC Public Notice* at 5-6; *Third MDC Proposed Instructions* at 22, 33-34 (treating security and surveillance services as a component of site commissions).

⁵² Worth Rises Comments at 2; Public Interest Parties Reply at 6; *Third MDC Instructions* at 24-25, 41-42. ICS providers should be mindful that any reporting in the separate subcategories outside the Site Commissions section must be exclusive of the data reported in connection with site commissions to prevent double-counting of security and surveillance costs. *Third MDC Instructions* at 24-25, 41-42.

⁵³ Worth Rises Comments at 2; Public Interest Parties Reply at 6.

20. We decline, however, to adopt a proposal that we collect more detailed information on security and surveillance costs spanning over 30 suggested categories of information.⁵⁴ We agree with certain ICS providers that the requested level of granularity would be overly burdensome.⁵⁵ While the collection of robust security and surveillance cost data is a critical component of this data collection, we find that further granularity in reported security costs is unnecessary in light of the revisions we incorporate into our security and surveillance data collection as well as our adoption of instructions that require ICS providers to submit narrative explanations of such costs and cost allocations.⁵⁶ We direct providers to include in their narrative responses any information they have that would provide more granular information about their security and surveillance costs.

21. Finally, we decline to address the issue of what categories, if any, of security and surveillance costs may be recoverable through interstate and international ICS rates.⁵⁷ That issue is expressly teed up in the Commission's *2021 ICS Notice* and is a matter for the Commission to decide as part of its rulemaking proceeding.⁵⁸ The record confirms it is not the proper subject of this data collection Bureau-level Order.⁵⁹

5. Ancillary Service Charges Data

22. Although we decline to modify the definition of "Revenue-Sharing Agreement" as discussed below, we revise our instructions to require providers to identify the payor and payee in each Revenue-Sharing Agreement, as requested by PPI.⁶⁰ We agree that this additional information indicating the flow of funds between such entities will shed useful light on revenue-sharing practices and help the Commission better understand how the marketplace for these agreements functions.⁶¹

6. Other Proposals

23. *Video Calling Services.* One commenter requests that we expand the data collection to require the reporting of detailed cost and other data specifically on providers' video calling services.⁶² As an initial matter, we require providers to report costs for non-ICS services, including any video services they offer.⁶³ We decline, however, to require providers to report detailed cost and other data on video services at this time. In *GTL v. FCC*, the U.S. Court of Appeals for the District of Columbia Circuit (D.C.

⁵⁴ Worth Rises Comments at 2-3, Appx.

⁵⁵ See, e.g., Securus Reply at 7-8; see also GTL Reply at 7. We similarly decline to collect security and surveillance costs data "at a granular level without ICS provider labeling" or a breakdown of security costs included and excluded from in-kind site commission payments as requested by another commenter. Public Interest Parties Reply at 5 (suggesting edits to "enable the Commission to make its own assessment of which costs should be categorized as recoverable, ICS-related security services"). We invite providers to include in their written responses in the Word template any information they have that would be responsive to Worth Rises' requests.

⁵⁶ *Third MDC Proposed Instructions* at 22, 34; *Third MDC Instructions* at 24-25, 41-42.

⁵⁷ See, e.g., Worth Rises Comments at 1 (arguing that the majority of security and surveillance services are not directly related to communication services and therefore cannot legitimately be passed down to ICS consumers); cf. GTL Reply at 7 (arguing that security and surveillance are a core function of ICS and opposing Worth Rises' proposal to exclude security costs from ICS providers' cost of service calculations).

⁵⁸ See *2021 ICS Notice*, 36 FCC Rcd at 9664-65, para. 323.

⁵⁹ Worth Rises Reply at 1; GTL Comments at 8-9; GTL Reply at 7-8.

⁶⁰ PPI Comments at 10; *Third MDC Instructions* at 29.

⁶¹ PPI Comments at 10.

⁶² *Id.* at 4-6 (suggesting the collection of specific data on video calling, and the revision of the instructions to collect revenue and expense information on voice calling, video calling, and all other services).

⁶³ *Third MDC Instructions* at 17.

Circuit) vacated the Commission's reporting requirements related to video calling, finding that the Commission had not sufficiently explained how its statutory authority extends to such services.⁶⁴ The Commission has not reached this question on remand.⁶⁵

24. *Additional Data Concerning Contracts.* We also decline to adopt requests that we collect all contracts between ICS providers and correctional facilities.⁶⁶ Although collection of all, or a sample of, such contracts might assist our interpretation of facility-level data,⁶⁷ we find at this time that the burden on providers of such a collection would outweigh any possible benefits,⁶⁸ and would substantially increase the administrative burdens associated with processing the related data.⁶⁹ Given that the Commission has authority to ask providers to produce specific contracts at any time if the need arises,⁷⁰ we decline to impose such an obligation at this time.

25. *Information Concerning Patent Assets/Royalty Expenditures.* We are not persuaded to expand the collection to obtain information concerning the potential use of patents as a tool for dominant carriers to prevent competition, as one commenter asks.⁷¹ The commenter does not articulate why or how the information it requests, such as the identity of the payor/licensor or a copy of any contract, would aid the Commission's review of inmate calling services costs and pricing.⁷² We also find that the production of this information would lie outside the scope of this collection while unduly burdening providers. Accordingly, we decline to require providers to submit information regarding patents.

26. *Miscellaneous.* We revise all references to "credit card" in our instructions and templates to instead refer to "payment card," a change that will avoid confusion and help us obtain data associated with both debit and credit cards.⁷³ We, decline, however, to create three new call categories: (1) traditional billed calls (paid for by end users), (2) facility-paid calls, and (3) unbilled calls (for which carriers receive no compensation).⁷⁴ We find the creation of these new reporting categories unnecessary and that the burdens associated with requiring providers to classify each call into one of these three new categories outweigh the potential benefits.

⁶⁴ *Global Tel*Link v. FCC*, 866 F.3d 397, 402, 415 (D.C. Cir. 2017) (*GTL v. FCC*) ("Before it may assert its jurisdiction to impose such a reporting requirement, the Commission must first explain how its statutory authority extends to video visitation services as a 'communication[] by wire or radio' under § 201(b) for interstate calls or as an 'inmate telephone service' under § 276(d) for interstate or intrastate calls.").

⁶⁵ GTL Reply at 4. We note that the Commission made no reference to video services in the guidelines it directed WCB/OEA to use in developing the data collection.

⁶⁶ PPI Comments at 16.

⁶⁷ *Id.* at 16.

⁶⁸ See GTL Reply at 6; Securus Reply at 9.

⁶⁹ See Securus Reply at 9.

⁷⁰ See, e.g., *id.*

⁷¹ PPI Reply at 2-3 (asserting that we should collect information on all patent royalty payments as well as copies of any relevant contracts, and that providers should be required to itemize all patents they own and provide an accounting of royalty revenues from these patents).

⁷² *Id.* (arguing in favor of collecting the identity of the payee/licensor, and amounts paid, among other information).

⁷³ PPI Comments at 16. We clarify that this adopted revision only relates to this data collection and does not extend to definitions contained in the Commission's rules. *Supra* para. 8.

⁷⁴ PPI Comments at 14-15; Public Interest Parties Reply at 9 (supporting PPI's request to create three categories of calls).

27. We revise the relevant portions of the instructions to require providers to submit individual-facility data where multiple facilities are covered by a single contract.⁷⁵ As the record reflects, providers with multi-facility contracts often merge or repeat the same data for several facilities covered by a single contract.⁷⁶ Where the responsive data are available, ICS providers must submit individual data for each facility even if that facility is covered by the same contract as other facilities. We decline, however, a request to require providers to submit separate, unredacted site commission data.⁷⁷ Although certain site commission data may be publicly available, we cannot properly prejudge potential provider requests for confidential treatment of other site commission data. Instead, any such requests will be evaluated in accordance with the *Protective Order* in this proceeding.⁷⁸ Filings containing legitimate confidential information can be appropriately redacted and filed pursuant to the guidance and limitations set forth in the *Protective Order* and the standard set forth in section 0.459 of the Commission's rules.⁷⁹

28. We also implement our proposal to allow ICS providers to elect whether to use the default weighted average cost of capital (WACC) of 9.75% or an alternative WACC.⁸⁰ If an ICS provider chooses to use a higher alternative WACC, the provider must submit a narrative response fully documenting and justifying the alternative.⁸¹ We agree with the Public Interest Parties' argument that an adequate response requires providers to submit calculations and work papers as both are necessary to establish that the provider's alternative WACC estimate reflects the provider's own and a demonstrably comparable-group of firms' financial data and economic circumstances, the use of widely accepted methods to estimate debt and equity costs and capital structure, and the collective risks of providing ICS, Automated Payment Service, Live Agent Service, and Paper Bill/Statement Service, as specified in our instructions.⁸²

⁷⁵ See, e.g., *Third MDC Instructions* at 31.

⁷⁶ Benj Azose Comments at 1-2 (alleging that providers may repeat the same ADP data across multiple facilities and or that providers may merge cells in their template responses in order to provide a single ADP figure for multiple facilities).

⁷⁷ *Id.* at 2-3.

⁷⁸ *Rates for Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (WCB 2013) (*Protective Order*).

⁷⁹ E.g., *Protective Order*, 28 FCC Rcd at 16956, para. 4. 47 CFR § 0.459(b); see *id.* § 0.459(c) (specifying that "[c]asual requests [for confidential treatment] (including simply stamping pages 'confidential') . . . will not be considered"); *Enforcement Bureau Reminds Public that Requests for Confidentiality Must Cover Only Material Warranting Confidential Treatment Under the Commission's Rules*, Public Notice, 35 FCC Rcd 6300 (EB 2020); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (clarifying non-confidential treatment for certain information).

⁸⁰ *Third MDC Proposed Instructions* at 20; *Third MDC Instructions* at 20.

⁸¹ We remind providers that if they elect to claim a WACC greater than 9.75% and do not fully document, explain, and justify their calculations, then WCB/OEA may apply the default WACC of 9.75% instead. *Third MDC Instructions* at 20.

⁸² Public Interest Parties Brattle Report at 12.

C. General Revisions Related to the Adopted Instructions

1. Definitions⁸³

29. *Accounting Entity, Affiliate, Business Segment, and Company.* We adopt the definitions of “Accounting Entity,” “Affiliate,” “Business Segment,” and “Company” set forth in the proposed instructions.⁸⁴ Investments and expenses to be assigned, attributed, or allocated to or among Inmate Calling Services, Automated Payment Service, Live Agent Service, Paper Bill/Statement Service, Other Ancillary Services, and non-ICS Services are presumptively limited to those investments and expenses reflected in the existing financial reports that are routinely and specifically prepared for the accounting entity for management, shareholder, or creditor review. The provider may rebut this presumption with data and analysis but faces a high bar given the obvious incentives to shift investments and expenses to rate-regulated services.

30. Accordingly, we adhere to our proposal to define “Company” as synonymous with “Accounting Entity,” which means “the smallest group of separate Business Segments that collectively account for 100% of the Provider’s ICS-Related Operations and ICS-related investments, expenses, and revenues.”⁸⁵ Together with “Business Segment,” these terms ground the cost-reporting process in existing financial reports, while allowing us to avoid the cost allocation issues and reporting issues that adversely impacted the Commission’s earlier mandatory data collections. In contrast, the definition of “Company” suggested by one commenter would broaden the scope of the cost-reporting process significantly without improving cost-reporting results.⁸⁶ If a calling services provider organizes its operations in a manner aimed at inflating its reported costs of providing calling services to incarcerated people,⁸⁷ that fact should be apparent in the provider’s response to the data collection.⁸⁸

31. *Security Services.* We revise the proposed definition of “Security Services” to prevent an overinclusive reading of the term.⁸⁹ Under the proposed definition, “Security Services” would include

⁸³ As noted in paragraph 8 above, this data collection is not the appropriate vehicle to modify the Commission’s existing rules. *Supra* para. 8. Accordingly, commenter suggestions that urge us to change the definitions of terms contained in the Commission’s rules are also outside the scope of this data collection. *See, e.g.*, PPI Comments at 10-11 (asserting that the definition of “Third Party Financial Transaction Fees” in 47 CFR § 64.6000(a)(5) is defective and urging that we adopt a different definition incorporating concepts from U.S. Treasury Department rules); PPI Comments at 15 (suggesting that we amend the definitions of “Fees for Single-Call and Related Services” and “Single-Call and Related Services” in 47 CFR §§ 64.6000(a)(2), 64.6020, to include situations where “the called party does not pay for the call using an account with the Provider”); Securus Comments at 7 (proposing, in effect, that we define “Jail” and “Prison” as types of “discrete physical location[s] from which calls are routed over a set of physical telecommunications infrastructure denoting the facility as an end point”).

⁸⁴ *Third MDC Proposed Instructions* at 6-7. Although we appreciate concerns that these definitions could be read to allow selective reporting that would adversely affect the results of the data collection, as we explain in the text we find it unnecessary to revise the definition of “Company” to mean “the legal entity that contains the Accounting Entity.” PPI Comments at 6-9.

⁸⁵ *Third MDC Instructions* at 6-7.

⁸⁶ PPI Comments at 7.

⁸⁷ *Id.*

⁸⁸ *Third MDC Instructions* at 19, 33.

⁸⁹ *Id.* at 10-11 (defining “Security Services”); *see* PPI Comments at 15 (suggesting a modification to narrow the definition of “Security Services”). Our revised definition is as follows:

Security Services means any security and surveillance system, product, or service that a Provider supplies to a Facility, including any such system, product, or service that allows Incarcerated Persons to make telephone calls as permitted by the Facility; helps the Facility ensure that Incarcerated Persons do not call persons they are not allowed to call; helps monitor and record on-going calls; or inspects and analyzes recorded calls. Security Services also include other related systems, products, and services, such as a voice
(continued....)

“any security and surveillance system, product, or service that a Provider supplies to a Facility” as well as “any service that allows Incarcerated Persons to make telephone calls as permitted by the Facility.”⁹⁰ As commenters explain, this proposed definition could “encompass a wide variety of non-security related services” or “would classify all ICS costs as ‘security services.’”⁹¹ We agree that, without amendment, the definition could skew provider responses. The revised definition removes this ambiguity, and also addresses concerns that the proposed definition is unclear and potentially overbroad.⁹² For further clarity, we also remove the last sentence from the proposed definition as unnecessary and potentially confusing, in accord with comments in the record.⁹³

32. *Revenue-Sharing Agreement.* We decline to adopt the suggestion that we narrow the definition of “Revenue-Sharing Agreement” so that it applies only to “a contract for services to be rendered by an Affiliate or Third Party, which also provides for payments to the Provider.”⁹⁴ We conclude that our proposed definition is tailored to identify the general relationship between the provider and the contracted party or parties within the specific context identified in each of the related information requests, including the scenarios discussed in the record.⁹⁵ Because our definition encompasses agreements regarding the provision of ICS or any ancillary service that “directly *or indirectly*” result in payments to providers,⁹⁶ it encompasses both the practices of concern identified in the record and any additional, as yet undisclosed, revenue sharing practices in which providers have engaged.

33. *Site Commission-Related Definitions.* We also do not modify the definition of “Monetary Site Commission” to include site commissions that “take the form of a payment in money or an equivalent accounting entry.”⁹⁷ Doing so would obscure the data regarding site commissions, rather than bring clarity to it. As proposed, the instructions intentionally delineate between monetary site commissions and in-kind site commissions by focusing on the actual exchange of money.⁹⁸ This proposal

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biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning telephone calls. The classification of a system, product, or service as a Security Service does not mean that it is part of a Provider’s ICS-Related Operations.

Third MDC Instructions at 10-11.

⁹⁰ *Third MDC Proposed Instructions* at 10-11.

⁹¹ PPI Comments at 15; Pay Tel Reply at 4.

⁹² PPI Comments at 15; Pay Tel Reply at 4-5. Securus additionally explains that more clarity is needed because of the interaction between security services and non-ICS related operations. Securus Comments at 5-6.

⁹³ The related requests for information we adopt ask providers to identify and describe supplied Security Services in the context of In-Kind Site Commissions or ICS-related Operations.

ICS-Related Operations means the actions or tasks performed by the Provider or authorized personnel to deliver Inmate Calling Services and related Ancillary Services to Incarcerated Persons and those they call, including but not limited to billing, customer service, and other requirements as determined by contract or by law. It excludes all Site Commission payments, including In-Kind Site Commission payments.

Third MDC Instructions at 10-11.

⁹⁴ PPI Comments at 10.

⁹⁵ *Id.*

⁹⁶ *Third MDC Proposed Instructions* at 10 (emphasis added) (defining “Revenue Sharing Agreement”).

⁹⁷ PPI Comments at 12.

⁹⁸ *Third MDC Proposed Instructions* at 8, 9 (defining “In-Kind Site Commissions” and “Monetary Site Commissions”).

would effectively reclassify an in-kind site commission, like the provision of certain equipment,⁹⁹ as a monetary site commission, collapsing the distinction we intend to capture between in-kind site commissions and monetary site commissions. We do agree, however, with PPI's suggestion that we clarify that the definition of "Contractually Prescribed Site Commissions" excludes legally mandated site commission payments even when such legally mandated payments are reflected in a contract.¹⁰⁰

34. *Capital Expenses.* We find it unnecessary to make the definition of "Capital Expenses" more comprehensive by specifically "captur[ing] expenditures on intangible assets such as technology licenses o[r] expenses on software."¹⁰¹ The current definition already includes annual amounts related to the amortization of capitalized expenditures on such intangible assets.

35. *Average Daily Population.* On our own motion, we revise the definition of "Average Daily Population" to make clear that data reported for that measure must reflect actual populations, rather than any estimate. A provider unable to provide exact ADP data must provide its best estimate and, in the Word template, indicate that fact and provide the basis for its estimate.

2. Adopting a Three-Year Reporting Period

36. We expand our proposed reporting period from one year to three years for the entire Mandatory Data Collection, including the cost data, as supported by the record. This action revises our proposal to generally collect data for each calendar year from 2019 through 2021, but to limit the collection of cost data to only calendar year 2021.¹⁰² Commenters, including both service providers and public interest groups, convince us that collecting cost data for three years will help prevent atypical, one-time expenses from being considered normal company costs, which they argue is a potential downside to collecting only a single year's cost data.¹⁰³ This potentiality becomes particularly acute if providers incurred large one-time costs related to COVID-19, as the record suggests may have happened.¹⁰⁴ Additionally, we find that the difference in burden between providing one year versus three years of cost data is marginal and far outweighed by the benefits of collecting cost data for three years.¹⁰⁵ The adoption

⁹⁹ PPI Comments at 12.

¹⁰⁰ *Id.* at 11-12. This clarification appropriately recognizes that a contract for the provision of inmate calling services may recite or incorporate state mandates for the payment of site commissions that are not the type of discretionary negotiated payments contemplated by the term "Contractually Prescribed Site Commissions." *Id.*

¹⁰¹ Public Interest Parties Brattle Report at 12.

¹⁰² *Third MDC Public Notice* at 2.

¹⁰³ PPI Comments at 14 (supporting expanding the cost reporting period to three years to account for variations); Securus Comments at 3 (supporting a three-year cost reporting period by stating that "[a]ssessing only a single year's expenses forecloses the possibility of normalizing one-time or lumpy expenses. For example, sales and installation costs are likely higher in the first year of a contract than in subsequent years.").

¹⁰⁴ Public Interest Parties Brattle Report at 13 (claiming that expanding the cost reporting period to include 2019 and 2020 "will allow for a more robust analysis of cost data by allowing comparisons across all three years, particularly due to potential anomalies during the [COVID-19] pandemic"); *see also* PPI Comments at 14 (recognizing cost variations due to the COVID-19 pandemic).

¹⁰⁵ Securus Comments at 3 (noting that unless a company has changed its accounting system during the reporting period, "there is not a material additional burden in reporting for three years rather than one year"). *But see* GTL Comments at 8 (arguing that separating site commission payments into the legally mandated and contractually prescribed categories would be burdensome for the years prior to October 26, 2021); GTL PRA Comments at 4-5. Relatedly, our *60-Day PRA Notice* estimated that it would take calling services providers an average of 245 hours to respond to the data collection as proposed. *60-Day PRA Notice*, 86 Fed. Reg. at 54970. GTL argues that this average "grossly underestimate[s]" providers' response times for that data collection as outlined in that *Notice*. GTL PRA Comments at 4. Instead of providing an alternative estimate, GTL simply points out that it provides calling services to over 1,900 facilities and that, even if it took only an hour per facility to respond to the data collection, GTL alone would spend over 1,900 hours preparing its response. GTL PRA Comments at 4. We reject GTL's

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of a three-year reporting period also accounts for providers that argue that data for the year 2021 is the most relevant and the best indicator of costs.¹⁰⁶ The three-year reporting period we adopt includes the year 2021 such that if that year proves most relevant, the collected information will speak for itself. Further, we find that adopting a consistent three-year period for all our data requests will reduce confusion among reporting providers, as well as include the one-year time period prior to any anomalous effects caused by the COVID-19 pandemic.

3. Rejecting Revisions to Financial Data Requests

37. We adopt the proposed requests for financial data set forth in the *Public Notice* and accompanying draft instructions and template—including conformance with generally accepted accounting principles—with a few minor exceptions suggested by the record as reflected herein.¹⁰⁷ GTL argues that our financial data requests are “impossible to satisfy,” are formatted specifically for dominant carriers, and are beyond our authority.¹⁰⁸ We disagree.¹⁰⁹ GTL fails to provide any specific explanation for why it would not be able to comply with our proposed request. GTL’s claims are also contradicted by the comments of other providers, indicating that ICS providers “already have access” to the requested data, and that our requests are “consistent with existing ICS provider recordkeeping practices.”¹¹⁰ We agree with PPI that any purported similarity to accounting rules for dominant carriers is “irrelevant,” especially when corporations are “frequently called upon to reformat [accounting] information for different reporting purposes.”¹¹¹ Finally, collecting this financial information is well within the Commission’s statutory authority¹¹² and the authority the Commission delegated to WCB/OEA for this collection.¹¹³

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argument. As the Commission has recognized, GTL is the largest calling services provider, “with an estimated market share approaching 50%.” *2021 ICS Order*, 36 FCC Rcd at 9550, para. 74. Given that market share, we would expect that GTL’s total response time would far exceed any industry average, regardless of the number of estimated hours. Nevertheless, we will update our average burden estimate to account for the additional effort required to produce the additional two years of cost data that we now require and the other changes we make in this Order. Our revised estimate, which will be included in the subsequent PRA notice related to this data collection, will reflect the likely burden of the data collection. *See* GTL PRA Comments at 5-6 (explaining that WCB/OEA must consider the burden associated with the reporting obligations in this data collection).

¹⁰⁶ NCIC Comments at 1-2; GTL Reply Comments at 8.

¹⁰⁷ *Public Notice* at 3; *Third MDC Proposed Instructions* at 15-21, 31-32, 39-40, Appendices A-B (containing links to the proposed templates); *Third MDC Instructions* at 15-22, 31-35.

¹⁰⁸ GTL Comments at 2-6; GTL Reply at 2-3; *see* GTL PRA Comments at 3-4.

¹⁰⁹ Whether providers are dominant “has no bearing on the Commission’s authority to mandate the manner in which ICS providers report cost data.” Public Interest Parties Reply at 2. Our requests apply to all ICS providers.

¹¹⁰ Pay Tel Reply at 3 (disagreeing with any suggestion that the reporting obligations might be “impossible” (citation omitted)); *see also* Securus Comments at 9 (supporting the proposed instructions and methodology); *cf.* GTL Comments at 3-6 (claiming the collection’s requirements are “impossible to satisfy” because they are inconsistent with accounting practices, but failing to articulate why).

¹¹¹ PPI Reply at 4.

¹¹² Public Interest Parties Reply at 3.

¹¹³ *E.g.*, *2021 ICS Order*, 36 FCC Rcd at 9618-22, paras. 218-27; *see also* Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, to Cherie R. Kiser, Counsel for GTL and Its Subsidiaries, Cahill Gordon & Reindel LLP, WC Docket No. 12-375, 35 FCC Rcd 7028, 7028 (WCB July 15, 2020) (redacted) (Request for Information and Documents Regarding GTL’s Inmate Calling Services).

38. We decline one commenter's request that we eliminate the proposed reporting concerning non-ICS services, as well as its suggestion that mandating such reporting is beyond our authority.¹¹⁴ Collecting the requested information regarding non-ICS services is essential if we are to ensure that, consistent with section 201(b) of the Communications Act, the costs relied upon to set rates for regulated services—in this case, ICS and associated ancillary services—do not include the costs of nonregulated activities.¹¹⁵ Additionally, this information will help the Commission verify the accuracy and reasonableness of providers' cost allocations. Although the commenter complains of the burden involved in providing this information, our instructions enable providers to report non-ICS services' costs collectively, substantially reducing the burdens that would otherwise be associated with providing more granular information about the costs of nonregulated services.¹¹⁶ At the same time, we decline to broaden our financial data requests to include federal income taxes paid, because the collection already requests that providers report "[o]ther income tax-related adjustments."¹¹⁷

4. Adopting Cost Allocation Procedures as Proposed

39. We adopt the cost allocation procedures as proposed in the *Public Notice* and decline to implement alternative proposals for the reasons that follow. As the Public Interest Parties recognize, "[t]he Third MDC provides a detailed methodology for providers to implement the allocation consistently."¹¹⁸ Our instructions require providers to fully document, explain, and justify all cost allocations they make.¹¹⁹ This already comprehensive requirement obviates the need to yield to record requests that we provide examples and guidance regarding direct attribution, or that we provide more detailed information on the methodology for such allocations.¹²⁰ Other commenters seek revisions to the allocation of common costs relying on direct costs, either by allowing alternative methodologies of common cost allocation, or by suggesting that the Commission should consider whether, or when, additional common cost allocation metrics are appropriate.¹²¹ We decline to modify our instructions requiring a direct cost allocation of common costs. While we are aware that using direct costs to allocate common or indirect costs "can be a problem if the direct costs are a very small share of total costs,"¹²² we note that this cost allocation method is the last two steps in a hierarchy of methodologies. Thus, we do not expect it to be used for a significant portion of any provider's costs, assuming each provider does its due diligence with respect to identifying and measuring the actual factors that drive its costs.¹²³ Authorizing alternative approaches to the allocation of common costs would sacrifice the desired

¹¹⁴ Securus Reply at 4-5 (describing such information as both "unwarranted and unnecessary" and arguing that "WCB/OEA have no authority to impose these reporting obligations").

¹¹⁵ See 47 U.S.C. § 201(b) (requiring that carriers' rates for interstate and international calls must be "just and reasonable"); *Sw. Bell Corp. v. FCC*, 896 F.2d 1378, 1379 (D.C. Cir. 1990) (explaining that the "FCC's responsibility under the Communications Act is to prevent prices for regulated telephone services from incorporating the costs of nonregulated activities and thus to ensure that telephone rates are 'just and reasonable'").

¹¹⁶ Securus Reply at 3-4; *Third MDC Instructions* at 17-19. In addition, many rows of the data requests will not apply to non-ICS services, in which case providers only have to report amounts for relatively general categories such as "Maintenance, repair, and engineering of site plant, equipment, and facilities," which should further limit the burden involved.

¹¹⁷ *Third MDC Instructions* at 16, 19. Further, annual total expenses include a return on net capital stock. See also Public Interest Parties Brattle Report at 12 (requesting collection of "income taxes paid").

¹¹⁸ Public Interest Parties Brattle Report at 6.

¹¹⁹ *Third MDC Instructions* at 17-19 (requiring written explanation of cost allocation steps).

¹²⁰ See Public Interest Parties Brattle Report at 13-14 (suggesting that "[d]irect analysis" may be "too broad").

¹²¹ Securus Comments at 9; Public Interest Parties Brattle Report at 14.

¹²² Public Interest Parties Brattle Report at 14.

¹²³ See *Third MDC Instructions* at 18.

uniformity in the allocation process.¹²⁴ We similarly decline a request that we reorder the third and fourth cost allocation steps.¹²⁵ We find no sound reason why the inversion of these two steps would be beneficial or efficient.¹²⁶

40. Other comments suggest adding a contract-level allocation step to our hierarchy of allocation instructions.¹²⁷ However, our instructions already explain that contract-level costs that are not directly assignable to facilities are to be treated as shared costs and provide steps for allocating such shared costs.¹²⁸ We find no reason to make any changes to these instructions. We are also unpersuaded that an allocation methodology based upon ADP will result in improved cost attribution, as one of the key objectives of our data collection is to ascertain from the cost data how costs vary among facilities that have different ADPs.¹²⁹

5. Adopting Certain Revisions to Response Granularity

41. We implement our proposal to require providers to submit data both at the company-wide level and at the correctional facility level. However, we adjust the reporting of operating expenses between the company-wide level and the facility level to ensure consistency in reporting of these expenses at all levels and to avoid imposing additional burdens on reporting providers.¹³⁰ We disagree with commenters that argue that providers should be able to report cost information only at the contract level.¹³¹ We find that making such a change would substantially increase the likelihood of recreating the same data issues the Commission confronted in the context of the Second Mandatory Data Collection.¹³²

42. We initially proposed an allocation of operating costs for facilities that differed from that sought at the company level. The record persuades us to revise the requirements on the allocation of operating costs among facilities to parallel the level of disaggregation required at the company level. As

¹²⁴ See, e.g., Public Interest Parties Reply at 7-8 (arguing that “[u]niformity across providers in the cost allocation methodology is essential”).

¹²⁵ Securus Comments at 8; see also *Third MDC Instructions* at 18 (requiring providers to, as a third cost allocation step, “directly attribute categories of shared [and common] investments and expenses . . . to particular services based on direct analysis of factors that cause a particular business function . . . investment[] or expense[] to increase or decrease”; and to, as a fourth cost allocation step, “allocate categories of shared [and common] investments and expenses . . . to particular services based on an indirect, cost-causative link”).

¹²⁶ Public Interest Parties Reply at 7 (arguing that “Securus has not explained why its approach is a sound alternative”).

¹²⁷ Public Interest Parties Brattle Report at 14; see also Securus Comments at 8-9 (proposing a two-step process in circumstances where costs cannot be allocated to specific facilities: first, allocate costs to the contract; and second, “allocate the contract costs to facilities based on the relative cost differences between facilities of given ADP groupings”); GTL Reply at 3 & n.13 (supporting Securus’s proposal).

¹²⁸ *Third MDC Instructions* at 29 (stating that “[s]hared investments are for assets used exclusively to provide Inmate Calling Services at or for a specific subset of Facilities that are not assignable or attributable to a particular Facility. Shared expenses are expenses incurred solely to provide Inmate Calling Services at or for a specific subset of Facilities that are not assignable or attributable to a specific Facility.”).

¹²⁹ See Public Interest Parties Reply at 8 (noting that “basing any allocation methodology on ADP cost differences requires detailed analysis by the Commission, which can only be done after the Third MDC”).

¹³⁰ See Securus Comments at 5 (advocating for the same level of granularity in reporting company-wide operating costs and facility-level operating costs).

¹³¹ GTL Comments at 6.

¹³² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8512, para. 79 (2020 *ICS Order* or 2020 *ICS Notice*) (identifying limitations in the data from the Second Mandatory Data Collection, including the fact that providers reported information on a contract basis).

Securus explains, the proposed instructions would require 16 categories of operating expenses to be reported at the company level, but only four categories of operating expenses to be reported at the facility level.¹³³ Securus explains that requiring similar levels of disaggregation for both company and facility data “would assist the Commission in identifying the different cost drivers between larger and smaller facilities” and “help the Commission and interested parties understand and validate the cost-causative methodologies used.”¹³⁴ We agree that adopting a similar level of disaggregation for facility data as for company-wide data will yield more useful cost allocation results. In addition, requiring consolidation of accounts at the facility level appears to require an additional step for providers, thereby imposing an unnecessary burden. As we seek to maximize the benefits of the data collection while minimizing burdens to the extent possible, we conclude that the same level of disaggregation should be required for both company-wide and facility-specific data.¹³⁵

43. We decline to adopt GTL’s proposal to permit providers to report information on a contract-only basis, rather than at the company and facility levels.¹³⁶ GTL claims that reporting information at the company and facility levels would be “directly contrary to the Commission’s finding that ‘many providers assess their inmate calling services operations on a contract-by-contract basis.’”¹³⁷ We disagree. The Commission made this observation in connection with its analysis of the responses to the Second Mandatory Data Collection and identified contract-level reporting as one of the principal limitations in the reported data.¹³⁸ In requiring the Third Mandatory Data Collection, the Commission directed WCB/OEA to “incorporate lessons learned from the two prior data collections” and to “[e]nsure that the provider has directly assigned to specific contracts or facilities investments and expenses directly attributable to inmate calling services to the extent feasible.”¹³⁹ Our decision to require facility-level reporting instead of contract-level reporting is a direct response to the Commission’s directives to avoid a repeat of the problems that affected prior data collections.¹⁴⁰ Accordingly, we are unpersuaded that we

¹³³ Securus Comments at 4.

¹³⁴ *Id.* at 5.

¹³⁵ Considering that we adopt facility-level disaggregation of operating expenses, we clarify that providers may use the same number of allocators they would have used to allocate expenses from the company-wide disaggregated accounts to the facility-level consolidated accounts. Thus, providers may use the same allocators for more than one cost category, instead of a separate allocator for each cost category. The proposed instructions and Excel template required: (a) 16 categories of operating expenses to be reported at the company-wide level (site commissions are included); (b) 15 to be reported at the company-wide, service specific level (site commissions are excluded); and (c) four to be reported at the facility-specific, ICS level (reflecting an aggregation of the company-wide, service specific categories). *Third MDC Proposed Instructions* at 16, 19-20, 31. We modify these instructions and the template to require 15 categories of operating expenses to be reported at the facility-specific, ICS level. (Site commissions are excluded.) *Third MDC Instructions* at 33-34.

¹³⁶ GTL Comments at 6.

¹³⁷ *Id.* (quoting *2021 ICS Order*, 36 FCC Rcd at 9543, para. 57).

¹³⁸ See *2020 ICS Order*, 35 FCC Rcd at 8512, para. 79 (explaining that the “collected data are subject to certain limitations based on differences in recordkeeping practices among the respondent providers”); *2021 ICS Order*, 36 FCC Rcd at 9543, para. 57 (expounding on the limitations in the data collected in the Second Mandatory Data Collection).

¹³⁹ *2021 ICS Order*, 36 FCC Rcd at 9621-22, paras. 225-26.

¹⁴⁰ In inviting comment on our proposed instructions and templates, we asked commenters how we should “require providers that track costs only on a contract level to respond.” *Third MDC Public Notice* at 3. GTL offers no specific proposal for how we could structure contract-level reporting to avoid the issues the Commission encountered in the Second Mandatory Data Collection.

should permit contract-level reporting, especially considering that other ICS providers support facility-level reporting.¹⁴¹

6. Financial Reports

44. We adopt our proposal to require all providers to submit audited financial statements or reports, or similar documentation, for the reporting period, to the extent they have been produced in the ordinary course of business.¹⁴² Providers must either submit these reports for each year of the reporting period or certify that they have not produced such reports in the ordinary course of business.

7. Effective Date

45. Our actions in this Order shall be effective on the date specified in a notice to be published in the Federal Register announcing approval by the Office of Management and Budget (OMB).

46. Pursuant to the Commission's directive set forth in the *2021 ICS Order*, responses to this Third Mandatory Data Collection will be due 120 days after WCB announces in a public notice that OMB has approved the data collection.¹⁴³

IV. PROCEDURAL MATTERS

47. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁴⁴ we have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Order.¹⁴⁵ The Supplemental FRFA is set forth in Appendix B.

48. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.¹⁴⁶ We have assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

V. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 155(c), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 276, and 403, and the authority delegated

¹⁴¹ *See, e.g.,* Pay Tel Reply at 2 (explaining the “need for specific data” such as “facility-specific cost information”); Securus Comments at 2-3 (explaining that while Securus “maintains certain cost information at the contract level, the proposed instructions provide reasonable means for allocating costs to individual facilities where a single contract includes more than one facility”).

¹⁴² *Third MDC Public Notice* at 7.

¹⁴³ *2021 ICS Order*, 36 FCC Rcd at 9622, para. 228.

¹⁴⁴ *See* 5 U.S.C. §§ 601-612.

¹⁴⁵ *See* 5 U.S.C. § 604. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹⁴⁶ *2020 ICS Notice*, 35 FCC Rcd at 8536-37, para. 146.

pursuant to sections 0.21, 0.91, 0.291, 0.201(d), 0.271, 0.291 of the Commission's rules, 47 CFR §§ 0.21, 0.91, 0.201(d), 0.271, 0.291, this Order IS ADOPTED.

50. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

Deena M. Shetler
Acting Chief
Office of Economics and Analytics

APPENDIX A**Third Mandatory Data Collection Instructions and Template**

The instructions and template for the Third Mandatory Data Collection are available at this link:
[Third Mandatory Data Collection Instructions](#).

APPENDIX B**Supplemental Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) have prepared this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible significant economic impact on small entities by the policies and rules adopted in this Order pertaining to the forthcoming Third Mandatory Data Collection for inmate calling services (ICS). A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was included with a *Public Notice* seeking comment on proposals to implement the Third Mandatory Data Collection in the Commission's Inmate Calling Services proceeding.² WCB/OEA sought written public comment on the proposals in that *Notice*, including comment on the Supplemental IRFA. WCB/OEA did not receive comments directed toward the IRFA. The Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Order and the Supplemental FRFA (or summaries thereof) will be published in the Federal Register.⁴

A. Need for, and Objectives of, the Data Collection

2. In this Order, WCB/OEA adopt policies and specific requirements to implement the forthcoming Third Mandatory Data Collection for ICS.⁵ In the *2021 ICS Order*, the Commission adopted a new data collection requirement.⁶ The Commission determined that this data collection would enable it to adopt permanent interstate and international rate caps, protect consumers against unjust and unreasonable ancillary service charges, and improve its continuing review of the inmate calling services marketplace.⁷

3. Pursuant to their delegated authority, WCB/OEA have prepared instructions and a template for the Third Mandatory Data Collection⁸ and are issuing the Order to adopt all aspects of these documents.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *WCB and OEA Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, DA 21-1192, at 12, Appx. B (WCB/OEA Sept. 22, 2021) (*Third MDC Public Notice* or *Public Notice*).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ In the *2020 ICS Notice*, the Commission sought comment on whether and how the Commission should proceed with any new data collection. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8532-33, paras. 132-33 (2020) (*2020 ICS Notice*). That *Notice* included an Initial Regulatory Flexibility Analysis. *Id.* at 8547, Appx. D. The *Third MDC Public Notice* included a Supplemental Initial Regulatory Flexibility Analysis. *Third MDC Public Notice* at 12, Appx. B.

⁶ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9618, para. 218 (2021) (*2021 ICS Order* or *2021 ICS Notice*).

⁷ *2021 ICS Order*, 36 FCC Rcd at 9619-20, para. 221.

⁸ See *supra* Appx. A.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

4. WCB/OEA did not receive comments specifically addressing the rules and policies proposed in the Supplemental IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. The Chief Counsel did not file any comments in response to the rules and policies proposed in the Supplemental IRFA.

D. Description and Estimate of the Number of Small Entities to Which the Third Mandatory Data Collection Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the Third Mandatory Data Collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹⁰ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹

7. Regulatory Flexibility Analyses were incorporated in the *2020 ICS Notice*, *2021 ICS Order*, and the *Third MDC Public Notice*.¹² In those analyses, the Commission described in detail the small entities that might be affected. Accordingly, in this Order, for the Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

8. The Third Mandatory Data Collection requires ICS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, and ancillary fees. WCB/OEA estimate that approximately 20 ICS providers will be subject to this one-time reporting requirement. In the aggregate, WCB/OEA estimate that responses will take approximately 47,100 hours and cost approximately \$418,570.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into

⁹ See 5 U.S.C. § 601(6).

¹⁰ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹¹ See 15 U.S.C. § 632.

¹² *2020 ICS Notice*, 35 FCC Rcd at 8547, Appx. D (Initial Regulatory Flexibility Analysis); *2021 ICS Order*, 36 FCC Rcd at 9688-96, Appx. C (Supplemental Final Regulatory Flexibility Analysis); *Third MDC Public Notice* at 12, Appx. B (Supplemental Initial Regulatory Flexibility Analysis).

account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹³

10. The Third Mandatory Data Collection is a one-time request and does not impose a recurring obligation on providers. Because the Commission’s *2021 ICS Order* requires all ICS providers to comply with the mandatory data collection, the collection will affect smaller as well as larger ICS providers. WCB/OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities, as identified in comments filed in response to the *Third MDC Public Notice* and the Supplemental IRFA, in finalizing the instructions and the template for the Third Mandatory Data Collection. In response to the comments, WCB/OEA have refined certain aspects of the data collection, including by expanding the reporting period for cost data, revising certain proposed definitions, and reorganizing the manner in which providers report certain costs. These modifications avoid unduly burdening responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection.

G. Report to Congress

11. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁴ In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹⁵

¹³ 5 U.S.C. § 603(c)(1)-(4).

¹⁴ *Id.* § 801(a)(1)(A).

¹⁵ *See id.* § 604(b).